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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,188	08/31/2004	Manfred Gilbert	LWEP:125US	5187
24041	7590	09/29/2006	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			PRITCHETT, JOSHUA L	
			ART UNIT	PAPER NUMBER

2872

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/711,188	Applicant(s) GILBERT ET AL.	
	Examiner Joshua L. Pritchett	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-27 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 5-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to Amendment filed August 28, 2006. Claim 1 has been amended and claims 20-27 have been added as requested by the applicant.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US 4,482,221).

Regarding claim 1, Clark discloses a microscope stand (10) comprising a side wall (14) that is defined by the microscope and includes an elongated opening (108) a microscope stage (22) at least one objective (20) that in a working position defines an optical axis (Fig. 1); a focusing device (24) having at least one operating element (34, 38 and 104) that is provided on the microscope stand (Figs. 1 and 2); wherein the operating element generates a relative motion between the objective and the microscope stage in the direction of the optical axis (col. 2 lines 20-29) and the operating element sits on a first shaft (30) of the focusing device and a side wall (14), wherein the focusing device is modifiable in terms of its position within the microscope

stand in such a way that the spatial arrangement of the at least one operating element on the side wall of the microscope stand is adjustable (col. 3 lines 40-52). As the lever (104) moves the spatial arrangement between the lever and the microscope sidewall is changed.

Regarding claim 2, Clark discloses the spatial arrangement of the operating element on the microscope stand is adjustable substantially in a direction parallel to the optical axis (col. 5 lines 29-32).

Regarding claim 3, Clark discloses a support carriage (25) is provided with which the focusing device and the operating element are associated (Fig. 2) and which slides along a guide provided on the microscope stand (col. 2 lines 36-40).

Regarding claim 4, Clark discloses the guide for the support carriage comprises a plain guide (Fig. 1). The examiner interprets the rectangular opening shown in Fig. 1 on the side of the microscope stand as a plain guide.

Regarding claim 16, Clark discloses at least one means (38) provided with which the focusing device can be immobilized on the microscope stand (Fig. 2). Fig. 2 shows that the spatial arrangement between the microscope stand and the element (38) is fixed.

Regarding claim 17, Clark discloses the operating element comprises a coarse (38) and/or a fine (34) drive.

Regarding claim 18, Clark discloses the two operating element are provided on each of the two side walls of the microscope stand (Fig. 2). Fig. 2 shows drives (38 and 34) on one side and drives (32 and 36) on the other side of the microscope.

Regarding claim 19, Clark discloses a holding element (25) on which the microscope stage is movable, is provided on the microscope stand (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (US 4,482,221) in view of Franz (DE 3607379).

Clark teaches the invention as claimed but lacks reference to electronic signals. Franz teaches a first shaft (8) of the focusing device is equipped with a coding disk that contacts a sensor element (electronic bit generator) which converts into electrical signals the rotation of the first shaft generated by the operating element (abstract). Franz further teaches the sensor element is a light barrier that is immovably connected to the focusing device (Fig. 1). The electronic bit generator is fixed within the console (7) and would not be transmissive to light. Franz further teaches at least one motor (6) that effects the relative motion between the objective and the microscope stage is provided in the microscope stand (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Clark reference include the electronic signals of Franz for the purpose of remotely actuating the

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focusing mechanism which would allow the operator to keep his hands, which could possible interfere with the illumination source, away from the microscope.

Allowable Subject Matter

Claims 20-27 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding claim 20, Clark discloses a microscope stand (10) comprising a side wall (14) that is defined by the microscope and includes an elongated opening (108) a microscope stage (22) at least one objective (20) that in a working position defines an optical axis (Fig. 1); a focusing device (24) having at least one operating element (34, 38 and 104) that is provided on the microscope stand (Figs. 1 and 2); wherein the operating element generates a relative motion between the objective and the microscope stage in the direction of the optical axis (col. 2 lines 20-29) and the operating element sits on a first shaft (30) of the focusing device and a side wall (14), wherein the focusing device is modifiable in terms of its position within the microscope stand in such a way that the spatial arrangement of the at least one operating element on the side wall of the microscope stand is adjustable (col. 3 lines 40-52). As the lever (104) moves the spatial arrangement between the lever and the microscope sidewall is changed. However, the prior art of record fails to teach or suggest the operating element adjustable substantially in the vertical and horizontal direction by means of a curved elongated hole.

The remaining claims depend from claim 20 and are allowable for the same reasons.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 5-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 5, the prior art of record fails to teach or suggest the operating element adjustable substantially in the vertical and horizontal direction by means of a curved elongated hole.

The remaining claims depend from claim 5 and are allowable for the same reasons.

Response to Arguments

Applicant's arguments filed August 28, 2006 have been fully considered but they are not persuasive.

Applicant argues the prior art fails to teach or suggest the elongated opening. The claim language fails to provide any structural features of the elongated opening other than the opening

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being defined by the microscope sidewall. The opening (108) is defined by the sidewall and therefore meets the current claim limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).


Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH-shortened-statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L. Pritchett whose telephone number is 571-272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua L Pritchett 
Examiner
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DREW A. DUNN
SUPERVISORY PATENT EXAMINER